

STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS

---

DECISION ON ADMINISTRATIVE APPEAL

RE: PUBLIC WORKS CASE NO: 2000-006

SPCA-LA COMPANION ANIMAL VILLAGE AND EDUCATION CENTER

---

I. INTRODUCTION AND PROCEDURAL HISTORY

On February 14, 2001, the Director of the Department of Industrial Relations ("Director" or "Department") issued a public works coverage determination that construction of the SPCA-LA Animal Shelter in Long Beach ("the Project") is a public work requiring the payment of prevailing wages, pursuant to Labor Code section 1720(a). On March 13, 2001, the City of Long Beach ("City") timely appealed that determination. There have been no responses from any other party.

II. ISSUES AND CONCLUSIONS ON APPEAL

City appears to make five principal arguments<sup>1</sup>:

(1) City's contribution to the Project was not the payment of public funds for construction;

(2) Even if the payment of \$1.5 million of City money to SPCA-LA was the payment of public funds, the amount that was spent on construction was so small as to be *de minimis*;

(3) City was not the awarding body, and therefore the construction at issue could not be a public work;

---

<sup>1</sup> City has also argued that the Project is not a public work under either Labor Code section 1720.2 or 1720.4. As the Director did not address or rely on either of these sections in reaching his determination, these arguments need not be addressed here.

1 (4) Even if City's payment would normally be  
2 sufficient to support a determination of public work,  
3 City's charter city status exempts it from having to pay  
4 prevailing wages;

5 (5) The Director is barred by estoppel from  
6 determining that Long Beach's charter city exemption does  
7 not apply in this situation; and

8 (6) The Department is guilty of laches.

9 For the reasons discussed below, none of these arguments is  
10 persuasive. The February 14, 2001 coverage determination  
11 finding that the Project is a public work, subject to payment of  
12 prevailing wages, is sustained.

13 III. RELEVANT FACTS

14 The Project is the construction of an animal shelter and  
15 future headquarters in City by SPCA-LA, a private non-profit  
16 corporation. The total cost of the project is approximately \$10  
17 million. The funding sources include a grant from the City in  
18 the amount of \$1.5 million, with remainder from privately raised  
19 donations. City was not a signatory to the construction  
20 contract.

21 Under an "Agreement" between City and SPCA-LA, City's \$1.5  
22 million grant was for "payments of costs and expenses  
23 incurred...in connection with the development of the project."  
24 City's grant money was deposited into a segregated account.  
25 According to documents provided by City, \$956,980 was spent on  
26 architectural, project management, legal, surveying and  
27 insurance expenses. The survey work, for example, included  
28 installation of grade stakes, building stakes, and curb and

1 gutter stakes, as well as various forms of stakes for utility  
2 and drainage-related matters. The cost of survey work was  
3 \$14,500. City also indicated that any balance from the grant  
4 money will be used for advertising, fundraising and start-up  
5 costs to the Project, such as furniture and equipment.

6 SPCA-LA's mission is to act as an advocate on behalf of  
7 animals and as an enforcer of their rights; to provide for the  
8 well-being of the animals of Southern California who are  
9 abandoned, injured, subjected to unfair or cruel treatment or  
10 otherwise in need. SPCA-LA employs sworn law enforcement  
11 officers who investigate animal cruelty throughout California.  
12 They often assist police agencies with serious animal crimes  
13 cases and work cooperatively with disaster organizations and  
14 animal control agencies seeking assistance.

15 The Project eventually will house one of SPCA-LA's shelters  
16 and an adoption center, as well as City's Animal Control  
17 Officer. The first phase of the Project is slated to open in  
18 Winter, 2001.

19 City is a charter city.

#### 20 IV. ANALYSIS

##### 21 1. Public Funds were Paid for Construction.

22 Labor Code section 1720(a) defines a public work as:

23 Construction, alteration, demolition, or  
24 repair work done under contract and paid for  
25 in whole or in part out of public funds,  
26 except work done directly by any public  
27 utility company pursuant to order of the  
28 Public Utilities Commission or other public  
authority. For purposes of this subdivision,

1 "construction" includes work performed during  
2 the design and pre-construction phases of  
3 construction including, but not limited to,  
4 inspection and land surveying work.

5 City contends that public funds were not involved in  
6 construction because the public funds provided by City were  
7 restricted to non-construction activities and purchases. Some  
8 of the funds admittedly were spent surveying. Neither the facts  
9 nor the law supports this argument.

10 Survey work has long been recognized by the Director as  
11 falling within the definition of "construction." See 8 CCR  
12 16001(c). This is consistent with the prevailing wage law's  
13 policy "to protect and benefit employees on public works  
14 projects." *Lusardi Const. Co. v. Aubry* (1992) 1 Cal.4th 976.  
15 See, *Wenzler & Kelly v. Department of Industrial Relations*  
16 (1981) 121 Cal.App.2nd 120, 174 Cal.Rptr. 744 [affirming  
17 Director's regulation that field survey work is covered by  
18 prevailing wage law]; See also, *Priest v. Oxnard* (1969) 275  
19 Cal.App.2d 751, 80 Cal.Rptr.145 ["Construction" includes entire  
20 process of building.] As such, the City's payment for, *inter*  
21 *alia*, survey work constituted the payment of public funds for  
22 construction.

23 Recent legislation reinforces long-standing regulation and  
24 case law that survey work comes within the definition of  
25 construction contained in Labor Code section 1720(a). Senate  
26 Bill 1999, which amended Labor Code section 1720, restated the  
27 definition of "construction" in subdivision (a) specifically to  
28 include surveying within the definition.

1 In addition, City's grant paid for project inspection work.  
2 SB 1999 explicitly included "work performed during the design  
3 and pre-construction phases of construction including, but not  
4 limited to, inspection. . ." within the definition of  
5 "construction."

6 While the amendment was not effective until January 1,  
7 2001, the legislative history of the amendment indicates the  
8 Legislature's intent to codify the Director's prevailing wage  
9 coverage decisions on survey work, e.g., Precedential Public  
10 Works Case No. 99-046, California State University, Northridge,  
11 Earthquake Recovery Project, June 9, 2000 ("Northridge  
12 Earthquake Recovery Project"):

13 On June 9, 2000, the department issued a  
14 decision in Public Works Case No. 99-046 [the  
15 Decision at issue in this case] finding that  
16 construction inspectors hired to do  
17 inspection for compliance with applicable  
building codes and other standards for a  
public works project were deemed to be  
employed upon public works and therefore  
entitled to prevailing wage.

\* \* \*

18 This bill codifies much of the department's  
19 June 9, 2000, decision by including  
20 "inspectors" in the definition of  
21 "construction" for purposes of public works.  
22 This bill also insures that workers earning  
23 the prevailing wage in the construction phase  
24 of a project will also be entitled to that  
wage for the same type of work done during  
the design and pre-construction phases of a  
project, even if that work is done pursuant  
to a services contract or otherwise, as the  
department found.

(Senate Rules Committee Report, August 23,  
2000, pp. 3, 5, emphasis added.)

26 In addition to the survey and inspection work, City's grant  
27 to SPCA-LA paid for architectural work, legal work, insurance  
28 expenses and project management, all of which constitute either

1 pre-construction work or work necessary to the construction, and  
2 therefore done in the execution of a public work under Labor  
3 Code section 1772. See, 70 Ops. Cal. Atty. Gen. 92 (1987);  
4 Precedential Public Works Case No. 2000-15, Downtown  
5 Redevelopment Plan Projects, City of Vacaville, March 22, 2001.

6 For this reason, the money paid for land survey work,  
7 inspection, architectural work, legal work, insurance and  
8 project management from City's grant to SPCA-LA was public funds  
9 used for "construction."

10 2. De Minimis Standard For The Payment of Public Funds.

11 City argues that, even if the money it gave the SPCA-LA  
12 were public funds used for "construction," the amount of public  
13 funds spent on construction activities was *de minimus* (\$14,500  
14 out of \$1.5 million). Therefore, City's payment to SPCA-LA did  
15 not constitute "payment of public funds." City cites no support  
16 for this proposition. In fact, the argument runs counter to the  
17 plain language in section 1720(a) that the payment must be "in  
18 whole or in part" from public funds. There is no *de minimus*  
19 provision.

20 3. There Is No Requirement City Be An Awarding Body For A  
21 Project To Be A Public Work.

22 City makes the argument that it is not an Awarding Body  
23 under 8 Cal. Code Regs. §16000 because it was not a signatory to  
24 the contract for the construction of the Project. Nothing in  
25 section 1720(a) requires that prevailing wages be paid only when  
26 a contract is entered into by an awarding body. The  
27 requirements of section 1720(a) are clear: public funds must be  
28 used "in whole or in part" for construction done under contract.

1 Prevailing wages can be required when the contracting parties  
2 are private organizations but the money is public. See, for  
3 example, Precedential Public Works Case No. 96-006, Department  
4 of Corrections, Community Correctional Facilities, June 11,  
5 1996, Precedential Public Works Case No. 99-052, Lewis Center  
6 for Earth Sciences Construction, November 12, 1999.

7 4. City's Charter City Status Does Not Exempt This  
8 Project From the Requirement to Pay Prevailing Wages.

9 City argues that its charter city status exempts the  
10 Project from prevailing wages. City argues that this exemption  
11 flows with the grant money it gave SPCA-LA. The money,  
12 according to City, retained the exempt characteristics even  
13 after the money left City's coffers for the private  
14 organization.

15 Under article XI, section 5 of the California Constitution,  
16 a city "may make and enforce all ordinances and regulations in  
17 respect to municipal affairs, subject only to restrictions and  
18 limitations provided in their several charters and in respect to  
19 other matters they shall be subject to general laws." City has  
20 availed itself of the power to make and enforce all laws and  
21 regulations with respect to municipal affairs. Insofar as a  
22 charter city legislates with regard to municipal affairs, its  
23 charter prevails over general state law. *Sonoma County*  
24 *Organization of Public Employees v. County of Sonoma* (1979) 23  
25 Cal.3d 296, 315, 152 Cal.Rptr. 903, *Vial v. City of San Diego*  
26 (1981) 122 Cal.App.3d 346, 175 Cal.Rptr. 647.

27 ///

28 ///

1 City is wrong about the charter city exemption for two  
2 reasons: first, the exemption only applies to those projects in  
3 which City is the awarding body, which it admits it was not in  
4 this case. Second, the Project would not subject to the charter  
5 city exemption even if City were the awarding body.

6 As City itself points out, it granted the money to a  
7 private organization that proceeded to contract for construction  
8 work; it is not a party to the construction contract. City has  
9 provided no authority for the proposition that a charter city  
10 exemption flows with a city's money. In fact, such a  
11 proposition runs counter to the policy of giving charter cities  
12 limited "home rule" in matters of only municipal concern.

13 Even if City were able to avail SPCA-LA of City's charter  
14 city exemption, the Project is not a municipal affair. A  
15 municipal affair is defined as a matter that affects the local  
16 citizens rather than the people of the state generally, whereas  
17 a matter of statewide concern extends beyond the local interests  
18 at stake. *Southern California Roads Co. v. McGuire* -(1934) 2  
19 Cal.2d 115, 120, 39 P.2d 412; *Gadd v. McGuire* (1924) 69 Cal.App:  
20 347, 354-355, 231 P. 754. Doubt as to whether a matter is truly  
21 a municipal affair is resolved in favor of the legislative  
22 authority of the state. *Baggett v. Gates* (1982) 32 Cal.3d 128,  
23 140 [185 Cal.Rptr. 232, 649 P.2d 874].

24 There are three principal factors governing whether a  
25 project is a municipal affair: (1) the extent of non-municipal  
26 control over the project; (2) the source and control of the  
27 funds used to finance the project; (3) the nature and purpose,  
28 including the geographic scope, of the project; and (4) the

extraterritorial scope of the project. *Southern California Roads Co. v. McGuire* (1934), *supra*, Precedential Public Works Case No. 97-018, 97-019, Primary Plant Headworks and Cannery Segregation Project, City of Modesto, March 17, 2000.

A. The Extent of Non-Municipal Control Over the Project.

City appears to have no control over the construction of the Project nor will it have control over the operation of the shelter once it is complete. SPCA-LA is in sole control.

B. The Source and Control of the Funds Used to Finance the Project.

SPCA-LA is raising the balance of the non-municipal funds for the project from private parties. City has had no control over those funds. While City placed some restrictions on how to spend the \$1.5 million it granted SPCA-LA, this does not equate to control over the entire Project.

C. The Nature and Purpose, Including Geographic Scope, of the Project.

According to SPCA-LA, the shelter is intended to serve the entire Los Angeles County area, as well as parts of Orange County. As SPCA-LA's website shows, this shelter is part of a Los Angeles countywide system of animal shelters, providing services to all of the communities within the county. In fact, when finished, the Project will be the headquarters of the entire countywide operation of the SPCA-LA and will include its operation as a county animal control program. Animals from all over the county will be housed in the shelter, not just those from Long Beach. This means the Project's effect will be well

1 outside the City's limits. See, *Simpson v. City of Los Angeles*  
2 (1953) 40 Cal.2nd 271, 253 Pac.2nd 464.

3 Closely related to the nature and purpose of the Project is  
4 its geographic scope. When a project transcends a municipal  
5 boundary, the project ceases to be a municipal affair and comes  
6 under general state laws. *Wilson v. City of San Bernardino*,  
7 *supra*, 186 Cal.App.2d 603, 611, 9 Cal.Rptr. 431. Here, the  
8 entire construction has occurred within the City's boundaries.

9 In summary, an application of the *McGuire* factors  
10 demonstrates that, even if a charter city exemption were  
11 available, the Project is not a municipal affair such that the  
12 exemption could successfully be claimed.

13 5. The Department Is Not Estopped From Denying The  
14 Charter City Exemption In This Case.

15 Another argument on which City relies to support its  
16 charter city exemption is a prior determination by a former  
17 Director of Industrial Relations finding a project in the City  
18 exempt under the charter city exemption. Public Works Coverage  
19 Determination No. 97-022, Long Beach Town Center, February 11,  
20 1998. This prior determination does not apply for two reasons.  
21 Government Code Section 11425.60(b) grants agencies the  
22 discretion to "designate as a precedent decision a decision or  
23 part of a decision that contains a significant legal or policy  
24 determination of general application that is likely to recur."  
25 The coverage determination City relies on has not been  
26 designated precedential by the Director. Second, the earlier  
27 determination did not concern a project where  
28 extraterritoriality was an issue, as it is here.

1 Furthermore, an essential element of estoppel is reliance.  
2 The essence of the Director's discretion is the ability to  
3 modify or amend prior decisions, hence the ability to designate  
4 new prevailing wage determinations and undesignate others. The  
5 very purpose of being able to designate determinations as  
6 precedential is to bind the Department to certain positions. In  
7 light of this fact, City cannot legitimately claim a right to  
8 rely on prior non-precedential determinations beyond the scope  
9 of the project for which those determinations issued.

10 6. City has failed to meet its burden of proving the  
11 elements of the defense of laches.

12 City asserts that the delay in deciding the issue of  
13 coverage precludes enforcement of the Director's determination,  
14 by operation of the doctrine of laches. The two main elements  
15 of the affirmative defense of laches are unreasonable delay and  
16 prejudice. Prejudice is never presumed. The party asserting  
17 laches as a defense bears both the burden of producing evidence  
18 and the burden of proving that the delay was unreasonable and  
19 that it resulted in prejudice. *Conti v. Board of Civil Service*  
20 *Commissioners of the City of Los Angeles* (1969) 1 Cal.3d 351, 82  
21 Cal.Rptr. 337.

22 City presents no evidence, other than the mere passage of  
23 time, to prove that the delay was unreasonable or that the delay  
24 resulted in prejudice. City has therefore not carried its  
25 burden of proof and, accordingly, the City's claim of laches is  
26 rejected.<sup>2</sup>

27  
28 <sup>2</sup> Some of the delay in the initial determination was caused by the  
delay in obtaining information from the SPCA-LA and City.

1       Moreover, City argues that because the Project was almost  
2 completed at the time of the initial coverage determination, it  
3 is unreasonable to require compliance with the Director's  
4 coverage determination at this point in time. Questions of  
5 coverage and compliance are distinct. Title 8, California Code  
6 of Regulations, section 16001 vests the Director with the quasi-  
7 legislative authority to determine questions of coverage under  
8 the public works laws.<sup>3</sup> The Director's coverage determinations  
9 are legally constructed policy decisions. While City raises the  
10 issue of compliance, the matter currently being decided is  
11 coverage.

12       Separate from the Director's authority to issue coverage  
13 determinations is the authority delegated to the Division of  
14 Labor Standards and Enforcement ("DLSE") to enforce compliance  
15 with California prevailing wage law. The statute of limitations  
16 for bringing an enforcement action varies depending on the date  
17 the public works contract was entered into. For this Project,  
18 Labor Code section 1775 gives DLSE 90 days from the filing of  
19 the notice of completion to file an enforcement action.

20       In setting the statute of limitations at a point in time  
21 subsequent to the filing of the notice of completion, the  
22 Legislature clearly envisioned that enforcement actions could be  
23 commenced even though construction has ceased, final payment on  
24 the contract has been released and the work has been accepted.  
25 Given DLSE's indisputable authority to take enforcement action  
26 upon completion of a public works project, the Director has no  
27

---

28       <sup>3</sup> See also *Lusardi Construction Co. v. Aubry* (1992), *supra*.

1 less authority to issue coverage determinations within that  
2 timeframe as well.

3 V. CONCLUSION

4 For these reasons, the Project is a public work, subject  
5 to the payment of prevailing wages.

6  
7 DATED:

8/24/01

Stephen P. Smith  
Director of Industrial Relations